

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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United States of America,

Case No. 19-cr-313 (ECT/TNL)

Plaintiff,

v.

**ORDER**

Santos Gomez Perez,

Defendant.

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**I. INTRODUCTION**

This matter is before the Court on Defendant Santos Gomez Perez's Motion for Temporary Furlough (ECF No. 35) and Motion to Continue Motion-Filing Date. (ECF No. 36.) Defendant has also filed a Statement of Facts in Support of Exclusion of Time Under the Speedy Trial Act. (ECF No. 37.)

**II. MOTION FOR TEMPORARY FURLOUGH**

Defendant seeks a one-day furlough from the Sherburne County Jail to visit his mother, who is currently hospitalized in intensive care at United Hospital in St. Paul. (ECF No. 35 at 1.) The Government opposes the motion. (ECF No. 38.) The Court has reviewed the request and conferred with Probation and the United States Attorney. Though the Court appreciates the serious condition of his mother's health, Defendant's motion is respectfully denied.

### III. MOTION TO CONTINUE

Defendant seeks additional time to “review the discovery and identify issues before filing the pretrial motions.” (ECF No. 36 at 1; *see also* ECF No. 37 at 1.) The Government does not oppose Defendant’s motion. (ECF No. 36 at 1.)

Additionally, beginning on March 13, 2020, and continuing thereafter, the Honorable John R. Tunheim, Chief District Judge for the United States District Court for the District of Minnesota, has issued a series of General Orders in connection with the COVID-19 pandemic, addressing, among other things, criminal proceedings and trials.<sup>1</sup> On September 3, 2021, Chief Judge Tunheim entered General Order No. 30, which allows limited in-person proceedings for defendants who decline to consent to conducting the proceeding using videoconferencing, or telephone conferencing if videoconferencing is not reasonably available. *See generally In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 30 (D. Minn. Sept. 3, 2021). General Order No. 30 states that because only limited in-person proceedings may be held each day, criminal proceedings may be continued until the date that the criminal proceeding takes place.

General Order No. 30 continues to encourage the use of videoconferencing in criminal proceedings and states that, with the defendant’s consent, criminal proceedings will be conducted by videoconferencing, or telephone conferencing if videoconferencing is not reasonably available.<sup>2</sup> General Order No. 30 further provides that the presiding judge

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<sup>1</sup> All General Orders related to the COVID-19 pandemic may be found on the Court’s website at <https://www.mnd.uscourts.gov/coronavirus-covid-19-guidance>.

<sup>2</sup> *See also* General Order No. 31, which went into effect on September 22, 2021, vacated General Order No. 29, and

will enter orders in individual cases to extend deadlines and exclude time under the Speedy Trial Act to address delays attributable to COVID-19. **Accordingly, should Defendant file pretrial motions, counsel shall also file a letter indicating whether Defendant consents to a motions hearing by videoconference.** (*See also* ECF No. 21; ECF No. 31 at 3.)

Pursuant to 18 U.S.C. § 3161(h), this Court finds that the ends of justice served by granting a continuance outweigh the best interests of the public and Defendant in a speedy trial and such continuance is necessary to provide Defendant and his counsel reasonable time necessary for effective preparation and to make efficient use of the parties' resources.

#### IV. ORDER

Based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Defendant's Motion for Temporary Furlough (ECF No. 35) is **DENIED**.
2. Defendant's Motion to Continue Motion-Filing Date (ECF No. 36) is **GRANTED**.
3. The period of time from **November 17, 2021 through January 14, 2022**, shall be excluded from Speedy Trial Act computations in this case.
4. All motions in the above-entitled case shall be filed and served consistent with Federal Rules of Criminal Procedure 12(b) and 47 on or before **December 10, 2021**.<sup>3</sup>

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extended the Court's authorization to conduct certain criminal proceedings via video or telephone conference pursuant to the CARES Act "[b]ecause the emergency created by the COVID-19 outbreak continues to materially affect the functioning of court operations in the District of Minnesota." *In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 31 (D. Minn. Sept. 16, 2021).

<sup>3</sup> "Before filing a motion under Fed. R. Crim. P. 12(b), the moving party must confer with the responding party. The

D. Minn. LR 12.1(c)(1). Two courtesy copies of all motions and responses shall be delivered directly to the chambers of Magistrate Judge Tony N. Leung.<sup>4</sup>

5. **Counsel shall also file a letter on or before December 10, 2021, indicating whether Defendant consents to a motions hearing by videoconference.**

6. **Counsel shall electronically file a letter on or before December 10, 2021, if no motions will be filed and there is no need for a hearing.**

7. All responses to motions shall be filed by **December 27, 2021**. D. Minn. LR 12.1(c)(2).

8. Any Notice of Intent to Call Witnesses<sup>5</sup> shall be filed by **December 27, 2021**. D. Minn. LR 12.1(c)(3)(A).

9. Any Responsive Notice of Intent to Call Witnesses<sup>6</sup> shall be filed by **December 30, 2021**. D. Minn. LR 12.1(c)(3)(B).

10. A motions hearing will be held pursuant to Federal Rules of Criminal Procedure 12(c) where:

- a. The Government makes timely disclosures and a defendant pleads particularized matters for which an evidentiary hearing is necessary;  
or
- b. Oral argument is requested by either party in its motion, objection or response pleadings.

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parties must attempt in good faith to clarify and narrow the issues in dispute.” D. Minn. LR 12.1(b).

<sup>4</sup> U.S. Mail or hand-deliver to 300 South Fourth Street, Suite 9W, Minneapolis, MN 55415.

<sup>5</sup> “When a party intends to call witnesses at a hearing on a motion under Fed. R. Crim P. 12(b), the party must file a notice within 35 days after the arraignment. The notice must identify the number of witnesses whom the party intends to call, the motion or motions that each witness will be addressing, and the estimated duration of each witness’s testimony.” D. Minn. LR 12.1(c)(3)(A).

<sup>6</sup> “If after reviewing a notice under LR 12(c)(3), a party intends to call witnesses at the same hearing, that party must file a responsive notice within 38 days after the arraignment. The responsive party must identify the number of witnesses whom the party intends to call, the motion or motions each witness will be addressing, and the estimated duration of each witness’s testimony.” D. Minn. LR 12.1(c)(3)(B).

11. If required and subject to further order of the Court, the motions hearing shall be heard before Magistrate Judge Tony N. Leung on **January 14, 2022**, at **9:00 a.m.**, in **Courtroom 9W**, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, **MINNEAPOLIS**, Minnesota 55415. D. Minn. LR 12.1(d).

12. **TRIAL:**

a. **IF NO PRETRIAL MOTIONS ARE FILED, the following trial and trial-related dates are:**

Counsel should submit two hard copies of trial briefs, voir dire, proposed jury instructions, exhibit and witness lists, and trial-related motions (including motions in limine) to District Judge Eric C. Tostrud's chambers on or before **December 13, 2021**. In addition, counsel should email the proposed jury instructions and witness lists to: [tostrud\\_chambers@mnd.uscourts.gov](mailto:tostrud_chambers@mnd.uscourts.gov).

Judge Tostrud will hold a final pretrial conference on **December 22, 2021** at **9:00 a.m.** in Courtroom 3B, Warren E. Burger Federal Building and U.S. Courthouse, 316 North Robert Street, **SAINT PAUL**, Minnesota.

This case must commence trial on **December 27, 2021** at **1:00 p.m.** before District Judge Tostrud in Courtroom 3B, Warren E. Burger Federal Building and U.S. Courthouse, 316 North Robert Street, **SAINT PAUL**, Minnesota.

b. **IF PRETRIAL MOTIONS ARE FILED, the trial date, and other related dates, will be rescheduled following the ruling on pretrial motions. Counsel must contact the Courtroom Deputy for District Judge Tostrud to confirm the new**

**trial date.**

Dated: November 22, 2021

*s/Tony N. Leung*  
TONY N. LEUNG  
United States Magistrate Judge  
District of Minnesota

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